IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPLICATION NO.325 OF 2006
WITH
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CRIMINAL APPLICATION NO.327 OF 2006

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders	Court's or Judge's Orders

Mr.Kafil Khan, adv. for Applicants.

Mr.A.H.Palekar i/b S.Ashwinikumar for Respondent Nos.1 to 5.

Mrs.V.R.Bhosale, APP for the State/Respondent No.7.

CORAM: J.H.BHATIA, J.
DATE : 18th January, 2007.

P.C.:

1. Heard Mr.Kafil Khan, the learned counsel for the applicants , Mr.Palekar, the learned counsel for respondent nos.1 to 5 and Mrs. V.R.Bhosale, APP for the State/Respondent No.7.

2. These applications are filed seeking condonation of delay of 655

days in filing appeals against the dismissal of three criminal cases filed under Section 138 of the Negotiable Instruments Act. Respondent Nos.1 to 5 were the accused in the said cases. According to the applicants, even though criminal cases were filed long back, the accused persons could not be served for a period of 3 to 4 years. One, Mr.U.Anil Kumar, who was an employee of the applicant-company, was looking after these cases. However, he left the job of the applicant- company on 30th September, 2003. Due to his resignation, he could not attend the cases on two dates on 8-1-2004 and 13-04-2004. The learned Metropolitan Magistrate dismissed the complaints under Section 256 of Cr.P.C. on 13-4-2004. After dismissal, for the first time in October, 2005, the applicant-company came to know that these cases were dismissed in default. Application for certified copy was filed on 27-10-2005 and certified copy

was received on 29-11-2005. Thereafter, a revision application was filed in the Sessions Court. The Sessions Court allowed the revision application and condoned the delay but that order was challenged by the respondents in Writ Petition No.828 of 2006. As the order passed by the Metropolitan Magistrate under Section 256 of the Cr.P.C. had the effect of acquittal, it was found that it was necessary to prefer an appeal against the acquittal and the appeal should be preferred before the High Court only. In view of this, revision application could not be pursued and the applicants preferred 3 appeals with the present applications.

3. The applicants have properly and satisfactorily explained the delay in filing the appeals. The amount involved in 3 criminal cases under Section 138 of the Negotiable Instruments Act is to the tune of Rs.10 lakhs. Due to the pendency of

the criminal cases, the applicants had not taken any civil action and that civil action must have been time barred. Taking into consideration all the circumstances, I find, in the interest of justice, that the delay may be condoned. Delay is hereby condoned and the applications stand disposed off.

(J.H.BHATIA, J.)